

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY SMITH,  
Plaintiff,

v.

H. MADSEN, et al.,  
Defendants.

Case No. [21-cv-04590-JSC](#)

**ORDER OF SERVICE**

**INTRODUCTION**

Plaintiff, a California prisoner, filed this pro se civil rights complaint under 42 U.S.C. § 1983 against three correctional officers based on events that occurred in 2019 at the California Training Facility (“CTF”).<sup>1</sup> Plaintiff’s application to proceed *in forma pauperis* is granted in a separate order. For the reasons explained below, the complaint is ordered served upon Defendants.

**STANDARD OF REVIEW**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the

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<sup>1</sup> Plaintiff consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (ECF No. 1 at 8.)

1 claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the  
2 statement need only give the defendant fair notice of what the . . . claim is and the grounds upon  
3 which it rests.” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although to  
4 state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to  
5 provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a  
6 formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must  
7 be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*,  
8 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer “enough facts to  
9 state a claim for relief that is plausible on its face.” *Id.* at 1974.

10 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a  
11 right secured by the Constitution or laws of the United States was violated, and (2) that the alleged  
12 violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S.  
13 42, 48 (1988).

### 14 **LEGAL CLAIMS**

15 Plaintiff’s allegations that Defendants Maiorano and Madsen used force against him, and  
16 that Defendant Garcia failed to intervene, when liberally construed, state a cognizable claim for  
17 the violation of his rights under the Eighth Amendment. Plaintiff’s allegations that Defendants  
18 searched him, used excessive force, failed to report that use of force, and filed false disciplinary  
19 reports against him because he had previously filed administrative grievances, when liberally  
20 construed, state a cognizable claim for retaliation for Plaintiff’s exercise of his First Amendment  
21 rights.

### 22 **CONCLUSION**

23 1. Defendants H. Madsen, S. Maiorana, and V. Garcia shall be served at the California  
24 Training Facility in Soledad, California.

25 Service shall proceed under the California Department of Corrections and Rehabilitation’s  
26 (CDCR) e-service program for civil rights cases from prisoners in CDCR custody. In accordance  
27 with the program, the Clerk is directed to serve on CDCR via email the following documents: the  
28 Complaint, a Magistrate Judge jurisdiction consent form, this Order, a CDCR Report of E-Service

1 Waiver form, and a summons. The Clerk also shall serve a copy of this Order on the Plaintiff.

2 No later than 40 days after service of this order via email on CDCR, CDCR shall provide  
3 the Court a completed CDCR Report of E-Service Waiver advising the Court which Defendant(s)  
4 listed in this order will be waiving service of process without the need for service by the United  
5 States Marshal Service (USMS) and which Defendant(s) decline to waive service or could not be  
6 reached. CDCR also shall provide a copy of the CDCR Report of E-Service Waiver to the  
7 California Attorney General's Office which, within 21 days, shall file with the Court a waiver of  
8 service of process for the Defendant(s) who are waiving service.

9 Upon receipt of the CDCR Report of E-Service Waiver, the Clerk shall prepare for each  
10 Defendant who has not waived service according to the CDCR Report of E-Service Waiver a  
11 USM-205 Form. The Clerk shall provide to the USMS the completed USM-205 forms and copies  
12 of this Order, the summons, and the operative complaint for service upon each Defendant who has  
13 not waived service. The Clerk also shall provide to the USMS a copy of the CDCR Report of E-  
14 Service Waiver.

15 2. Defendants shall complete and file the Magistrate Judge jurisdiction consent form  
16 within the deadline provided on the form. They shall also file an answer in accordance with the  
17 Federal Rules of Civil Procedure.

18 3. To expedite the resolution of this case:

19 a. No later than **91** days from the date this order is issued, Defendants shall file a  
20 motion for summary judgment or other dispositive motion. The motion shall be supported by  
21 adequate factual documentation and shall conform in all respects to Federal Rule of Civil  
22 Procedure 56 and shall include as exhibits all records and incident reports stemming from the  
23 events at issue. If Defendants are of the opinion that this case cannot be resolved by summary  
24 judgment, they shall so inform the Court prior to the date the summary judgment motion is due.  
25 All papers filed with the Court shall be promptly served on Plaintiff.

26 b. At the time the dispositive motion is served, Defendants shall also serve, on a  
27 separate paper, the appropriate notice required by *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th  
28 Cir. 1998) (en banc). See *Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012).

1 c. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the  
2 Court and served upon Defendants no later than **28 days** from the date the motion is filed.  
3 Plaintiff must read the attached page headed "NOTICE -- WARNING," which is provided to him  
4 pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc).

5 d. Defendants shall file a reply brief no later than **14** days after the opposition is  
6 filed.

7 e. The motion shall be deemed submitted as of the date the reply brief is due. No  
8 hearing will be held on the motion unless the Court so orders at a later date.

9 4. All communications by Plaintiff with the Court must be served on Defendants or  
10 their counsel once counsel has been designated, by mailing a true copy of the document to  
11 Defendants or their counsel.

12 5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.  
13 No further Court order under Federal Rule of Civil Procedure 30(a)(2) is required before the  
14 parties may conduct discovery.

15 Plaintiff is reminded that state prisoners inmates may review all non-confidential material  
16 in their medical and central files, pursuant to *In re Olson*, 37 Cal. App. 3d 783 (Cal. Ct. App.  
17 1974), 15 California Code of Regulations § 3370, and the CDCR's Department Operations  
18 Manual §§ 13030.4, 13030.16, 13030.16.1-13030.16.3, 13030.21, and 71010.11.1. Requests to  
19 review these files or for copies of materials in them must be made directly to prison officials, not  
20 to the Court.

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6. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address." He also must comply with the Court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). Reasonable requests for an extension of a deadline will be allowed upon a showing of good cause if the request is filed prior to the deadline.

**IT IS SO ORDERED.**

Dated: July 2, 2021

  
JACQUELINE SCOTT CORLEY  
United States Magistrate Judge

**NOTICE -- WARNING (SUMMARY JUDGMENT)**

If Defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact-- that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in Defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.